

ST 02-0184-GIL 08/16/2002 CONSTRUCTION CONTRACTORS:

Construction contractors who physically incorporate tangible personal property into real estate owned by exempt organizations that hold tax exempt "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in 86 Ill. Adm. Code 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. (This is a GIL).

August 16, 2002

Dear Xxxxx:

This letter is in response to your letter dated May 8, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

OUR CUSTOMER AAA ORDER CARPET FROM US. BUT THE END USER IS BBB. WHEN AAA PAY THE INVOICE THE ILLINOIS SALES TAX WAS DEDUCTED. BUT AAA PROVIDE US WITH THE END USER EXEMPTION CERTIFICATE. CAN AAA USED THE EXEMPTION CERTIFICATE OF BBB TO BE EXEMPT FROM ILLINOIS TAX?. COMPANY ALREADY PAY THE SALES TAX TO THE STATE OF ILLINOIS. CAN WE ISSUE A CREDIT TO THIS TRANSACTION. ATTACHED IS A COPY OF EXEMPTION CERTIFICATE AND INVOICE.

PLEASE ANSWER ME IN WRITING.

THANK YOU FOR IMMEDIATE ATTENTION TO THIS MATTER.

The exemption certificate that you sent in with your letter is a photocopy of a letter the Illinois Department of Revenue issued to BBB informing it that it was being issued tax exemption identification number # on the basis of being an exclusively charitable organization. Organizations that qualify as exclusively religious, charitable, or educational or as a governmental body can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers ("E" numbers). These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes.

Persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal

property they physically incorporate into realty. They owe Use Tax because they are considered the end users of the materials they take off the market to permanently affix to real estate, *G.S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue*, 23 Ill.2d 180 (1961). See the enclosed copy of 86 Ill. Adm. Code 130.1940. When the purchasing construction contractor (whether he is the prime contractor or the subcontractor) buys the item that he will convert into real estate in finished form, the tax base is what such construction contractor pays for the item. When contractors buy building materials they will incorporate into real estate from suppliers not registered to collect Illinois tax, the contractors must self-assess the Use Tax and pay it directly to this Department.

However, contractors who physically incorporate tangible personal property into real estate owned by exempt organizations that hold tax exempt "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in 86 Ill. Adm. Code 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

After the entity has provided its "E" number, the contractor must provide its suppliers with the exemption identification number of the exempt organization that owns the property. In addition, the contractor must provide its suppliers with certifications explaining that it is making improvements to realty owned by the exempt organization. This certification must contain the name and address of the exempt organization, as well as the date the contract was executed.

Section 130.2075(d)(4) states that:

"A supplier claiming exemption hereunder shall have among his records a certification from the purchasing contractor stating that his purchases are for conversion into real estate under a contract with a church, charity, school or governmental body, identifying the church, charity, school or governmental body that is involved by name and address and stating on what date his contract was entered into. The supplier shall also have among his records the active exemption number issued by the Department to the organization for which the purchasing contractor is acting."

The words "purchases are for conversion into real estate" mean purchases of tangible personal property by a construction contractor who will affix such property to a building structure so that it is permanently incorporated into that structure as an integral part thereof. Some examples of qualifying building materials include lumber, bricks, insulation, doors, and plumbing systems. See 86 Ill. Adm. Code 130.1940, enclosed.

For further information about when carpeting is permanently affixed as real estate, see Section 130.1940(c)(1). As explained in the regulation, permanent affixation of floor coverings includes those installed by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack down strips"). However, permanent affixation does not include floor coverings that are area rugs or that are attached to the structure using only two-sided tape.

The Department has also promulgated a new regulation regarding "Sellers of Floor Coverings." See 86 Ill. Adm. Code 130.2101. We have enclosed a copy for your information.

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. Only the persons remitting tax to the Department are authorized to file such claims. No credit shall be given the taxpayer unless the taxpayer shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected.

See the enclosed copy of 86 Ill. Adm. Code 130.1401. The claims for credit must be prepared and filed upon forms provided by the Department containing the information listed in Section 130.1501(b).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.